

1

2 In its Petition, WorldCom proposed provisions governing the parties'
3 responsibilities with respect to confidential information in WorldCom's proposed
4 Part A, §§ 10.1, 10.1.1-10.1.2, 10.2, 10.2.1-10.2.3, 10.3, 10.3.1-10.3.2, 10.4-10.6,
5 10.7, 10.7.1-10.7.5, 10.8-10.13. In its Answer, with one clarification, Verizon VA
6 indicated it would agree to inclusion of these provisions in the parties'
7 interconnection agreement. The clarification involves re-inserting the language
8 that was part of the 1997 agreement, but deleted by WorldCom in its proposed
9 interconnection agreement to the Commission.

10

11 Specifically, Verizon VA agrees to the proposed language only if it is modified to
12 reinsert the language that was deleted by WorldCom from the current contract –
13 that is, §§ 22.13 and 22.14 of the current contract, which would now be §§ 10.13
14 and 10.14, giving Verizon VA the right to monitor WorldCom's use of CPNI for
15 Verizon VA's customer in a proper manner.

16

17 It is unclear why WorldCom is unwilling to accept this provision. Verizon VA
18 has a well-founded concern that some carriers may "surf" Verizon's customer
19 information database. That is to say that they may access the database without
20 authorization from customers and proceed to garner competitive information to
21 assist them in marketing to such customers. This would be a violation of the
22 customers' rights to privacy as well as a violation of the statutory prohibition on

1 using carrier information for marketing. Verizon VA's proposed language creates
2 a deterrent to carriers that may be predisposed to engage in such inappropriate
3 conduct. This is because they know that Verizon VA's wholesale group may
4 become aware of the conduct.

5
6 Verizon VA understands that WorldCom may believe that audit rights should
7 suffice in addressing this issue. Verizon VA's response would be that audit rights
8 while arguably helpful, are not sufficient. This is because audits may only be
9 conducted a limited number of times and, in addition, they are generally
10 expensive and time consuming. As such, it is Verizon VA's intent to conduct
11 such audits focused on a carrier's access to CPNI generally only when there is
12 some indication of suspicious conduct.

13
14 **XI. BINDING ARBITRATION (Issue IV-101)**

15 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

16 A. This issue, which is unique to WorldCom, has not yet been resolved by the
17 Parties, although it is the understanding of this Panel that the Parties are very close
18 to resolution. Specifically, Verizon VA has proposed that parties resolve this
19 issue by agreeing to incorporate the same language to which Verizon VA and
20 AT&T have agreed with respect to arbitration.

21
22 **Q. WHAT IS VERIZON VA'S POSITION ON THIS ISSUE?**

1 A. Verizon VA is not required to agree to an ADR provision at all, and cannot be
2 forced to forego its right to resolve disputes through the Commission’s regulatory
3 processes. Arbitration of disputes under the interconnection agreement is a
4 matter of contract and no party can be required to submit to third party binding
5 arbitration any dispute that it has not agreed to submit in clear language.
6 *WORLD COM Technologies, Inc. v. Communications Workers of Am.*, 475 U.S.
7 643, 648 (1986); *see also Marrowbone Development Company v. District 17,*
8 *United Mine Workers of Am.*, 147 F.3d 296, 300 (4th Cir. 1998) (“the obligation to
9 arbitrate is a creature of contract and . . . a party cannot be required to submit to
10 arbitration unless he has agreed to do so in a contract”); *Hendrick v. Brown &*
11 *Root, Inc.*, 50 F. Supp. 2d 527, 532 (E.D. Va. 1999) (“the legal predicate of
12 compulsory arbitration is contractual consent”); *Waterfront Marine Construction,*
13 *Inc. v. North End 49ers Sandbridge Bulkhead Groups A, B and C*, 251 Va. 417,
14 427, 46 S.E.2d 894, 899 (1996) (“in the absence of a clear agreement, parties
15 should not be forced to submit matters to arbitration which they may have
16 contemplated would be decided by a court”) (citing *First Options of Chicago, Inc.*
17 *v. Kaplan*, 514 U.S. 938 (1995)).

18
19 Thus, to the extent that WorldCom has proposed ADR provisions to which
20 Verizon VA has not agreed, this Commission cannot require inclusion of such
21 provisions in the parties’ proposed agreement. As mentioned, Verizon VA will,
22 as a compromise, agree to adopt the alternative dispute resolution procedures

1 agreed to by Verizon VA and AT&T. *See* § 28.11 of the AT&T-proposed
2 interconnection agreement.

3

4 **XII. INDEMNIFICATION (Issue IV-106)**

5 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

6 A. Issue IV-106 deals with indemnification. WorldCom proposed language that
7 included part of what the parties agreed to in their 1997 interconnection
8 agreement, as well as some additional language. WorldCom and Verizon VA
9 discussed this issue in the August 2 mediation session, but were unable to reach a
10 resolution.

11

12 **Q. WHAT IS VERIZON VA'S POSITION ON ISSUE IV-106?**

13 A. Verizon VA cannot agree to include WorldCom's proposed Part A, § 19.1, unless
14 subsection 19.1(b) is reinstated. That clause was in the parties' 1997
15 interconnection agreement, but has been deleted by WorldCom. Subsection (b)
16 provides an important incentive for each party to place in its tariffs and customer
17 contracts limitations on the liability of its suppliers (*e.g.*, Verizon VA as a supplier
18 to WorldCom) on account of the supplier's provision of services. This is a
19 standard clause, which is widely used among utilities.

20

21 The newly-proposed § 19.2 was not a part of the parties' 1997 interconnection
22 agreement. It too is wholly unacceptable to Verizon VA. It provides, in essence,

1 the opposite of what subsection 19.1(b) provides. Section 19.2 would effectively
2 make Verizon VA a guarantor, by requiring Verizon VA to indemnify WorldCom
3 for any claim that WorldCom's customers make against WorldCom on account of
4 Verizon VA's provision of services to WorldCom. Each party's liability under
5 the interconnection agreement should generally be limited to the value of the
6 services provided to the other party that are the subject of the claim.

7
8 **Q. HAS VERIZON VA OFFERED AN ALTERNATIVE INDEMNIFICATION**
9 **PROPOSAL?**

10 A. Yes. As an alternative, Verizon VA has proposed that it and WorldCom adopt the
11 indemnification provisions agreed to by Verizon VA and AT&T. *See* § 24 of the
12 AT&T-proposed interconnection agreement.

13
14 **XIII. INTELLECTUAL PROPERTY RIGHTS (Issue IV-107)**

15 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

16 A. Issue IV-107 involves the right of one party to use the intellectual property ("IP")
17 of another. WorldCom wants to have the right to use whatever IP may be
18 embedded in the Verizon VA UNEs it leases. Verizon VA, on the other hand,
19 wants protection against the unrestricted and/or unauthorized use of any such IP.

20
21 **Q. WHAT IS ITS CURRENT STATUS?**

1 A. The parties discussed this issue in the August 2 mediation session. After initially
2 considering the language offered by WorldCom in Part A, § 20.1, the parties
3 agreed to work from the language agreed to between Verizon VA and AT&T
4 (§ 28.16.1). As of the filing of this testimony, WorldCom has not advised
5 Verizon VA of any proposed changes to that language.
6

7 **Q. WHY DOES VERIZON VA OPPOSE WORLDCOM'S PROPOSED**
8 **LANGUAGE?**

9 A. This issue is related to Issue III-15. Although Verizon will comply with
10 applicable law, it cannot be forced to obligate itself through the interconnection
11 agreement beyond the requirements of applicable law. Contrary to WorldCom's
12 proposed language, except to the extent that Verizon may be required to use best
13 efforts to negotiate or renegotiate licenses to procure relevant rights and licenses
14 for CLECs to use the intellectual property of third-party vendors embedded in
15 Verizon VA's network in order to use Verizon's UNEs (which Verizon has
16 addressed in connection with Issue III-15), applicable law does not generally
17 require Verizon to attempt to negotiate to acquire intellectual property rights for
18 the benefit of a CLEC, and then indemnify that CLEC if it fails to acquire such
19 rights.
20

21 **XIV. MIGRATION OF SERVICE (Issue IV-110)**

22 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

1 A. In Issue IV-110, WorldCom seeks a guarantee that Verizon VA will not require
2 written proof from the subscriber prior to processing a preferred carrier change
3 order.
4

5 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

6 A. The parties discussed this issue at the August 2 mediation session. Verizon VA
7 explained its concern with contractually proscribing one of the three forms of
8 confirmation prescribed by the Commission's regulations. *See* 47 CFR
9 § 64.1120(c). After some discussion, WorldCom agreed to consider the language
10 agreed to by AT&T and Verizon VA. *See* §§ 18.3.1 and 18.3.2 of the AT&T-
11 Verizon VA Agreement. As of the filing of this testimony, WorldCom has not
12 advised Verizon VA of any proposed changes to that language.
13

14 **Q. WHAT IS VERIZON VA'S POSITION ON THIS ISSUE?**

15 A. Verizon VA will handle customer migrations in accordance with applicable law.
16 In this case, applicable federal law states that a carrier may not submit a preferred
17 carrier change order until it has been obtained from the customer either written or
18 electronic authorization, or it has obtained verbal authorization from a qualified
19 third party. 47 CFR § 64.1120(c). Because of this, and because of existing or
20 future state laws which may require written verification, it is inappropriate for
21 Verizon VA to agree never to require written confirmation of a carrier change
22 request.

1

2 **XV. NEGOTIATIONS PROMPTED BY CHANGE IN LAW (Issue IV-113)**

3 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

4 A. This issue involves the parties' obligations to negotiate in the event a change in
5 law materially affects the parties' obligations during the life of the interconnection
6 agreement.

7

8 **Q. WHAT IS VERIZON VA'S POSITION ON THIS ISSUE?**

9 A. Verizon VA must have the right to cease providing a service or benefit if it is no
10 longer required to so under applicable law. In such case, Verizon VA will comply
11 fully with any legal requirements governing the timing or other procedures
12 relating to discontinuance of the service or benefit.

13

14 **Q. WHAT IS WORLDCOM'S PROPOSAL?**

15 A. WorldCom hopes to deny Verizon VA the benefit of any future legal or regulatory
16 change that reduces the level (or type) of benefits or services Verizon VA must
17 provide. Under WorldCom's proposal, Verizon VA could be forced to continue
18 to provide services or benefits that the Commission has determined that Verizon
19 VA need not provide as of some date certain. WorldCom's suggestion that
20 Verizon VA "negotiate" an amendment to the interconnection agreement any time
21 applicable law reduces Verizon VA's obligations to provide a service or benefit is
22 ridiculous. Such language would allow WorldCom to hold Verizon VA hostage

1 every time such a change occurred, in effect, to delay the change of law for as
2 long as WorldCom could continue to “negotiate” about it.
3

4 **XVI. CUMULATIVE REMEDIES (Issue IV-120)**

5 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

6 A. In Issue IV-120, WorldCom seeks a clause that states that the remedies available
7 to either party under this agreement for a breach of the agreement are cumulative
8 and not exclusive.
9

10 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

11 A. The parties discussed this issue at the August 2 mediation session. Verizon VA
12 indicated that it does not oppose the first sentence of WorldCom’s proposed
13 § 27.2. Verizon VA explained, however, that it cannot agree to the remainder of
14 that section, because it seems to allow WorldCom the opportunity to “double-dip”
15 by seeking relief under self-executing performance standards and the agreement,
16 without any offset. WorldCom appears to have acknowledged Verizon VA’s
17 concern and offered to redraft the latter part of its proposed § 27.2. Verizon VA
18 has received and is considering WorldCom’s revised language.
19

20 **Q. WHAT IS VERIZON VA’S POSITION ON THIS ISSUE?**

1 A. Verizon VA agrees that the self-executing remedies available under a
2 performance plan are not exclusive, and that WorldCom would be entitled to seek
3 other forms of relief available to it under the contract for any alleged breach.
4 Should Verizon VA make payments to WorldCom or others (*i.e.*, pursuant to an
5 applicable law) under a performance plan, however, such payments must be offset
6 against any amounts owed to WorldCom under other forms of relief.

7

8 **XVII. REMEDIES - PERFORMANCE STANDARDS & METRICS (Issue IV-121)**

9 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

10 A. This issue raises the question whether the interconnection agreement should
11 incorporate any performance standards or metrics established by this Commission
12 or a state commission.

13

14 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

15 A. The parties discussed this issue at the August 2 mediation session; however, they
16 were unable to reach an agreement on this point. WorldCom contends that the
17 parties' interconnection agreement should incorporate performance standards
18 established by the Commission or a state commission. Verizon VA maintains that
19 they should not be incorporated into the interconnection agreement because they
20 operate as a matter of law.

21

1 **XVIII. DEFINITIONS (Issue IV-129)**

2 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

3 A. This issue raises the question whether the interconnection agreement should
4 contain a set of definitions.
5

6 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

7 A. The parties discussed this issue briefly in the August 2 mediation session.
8 WorldCom and Verizon VA agreed that the interconnection agreement should
9 contain a set of definitions. The parties also agreed that many of the less
10 controversial definitions are not in dispute (*e.g.*, "FCC"). As a result, WorldCom
11 agreed to propose a list of undisputed definitions. As of the filing of this
12 testimony, Verizon VA has not received that proposal.
13

14 The parties also recognized that disputed definitions were generally being
15 discussed along with the sections of the interconnection agreement in which the
16 defined terms are used. Therefore, the parties agreed not to address disputed
17 definitions separately under this issue.
18

19 **XIX. INDEMNIFICATION FOR DIRECTORY LISTINGS (Issue V-11)**

20 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

1 A. This issue raises the question whether Verizon VA should be required to
2 indemnify AT&T for errors or omissions of directory listings information.

3

4 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

5 A. AT&T and Verizon VA discussed this issue in the August 2 mediation session,
6 but were unable to reach a resolution. AT&T maintains that Verizon VA should
7 indemnify AT&T for any claim raised by an AT&T end user based on errors or
8 omissions in the directory listings provided by Verizon VA, where such errors or
9 omissions are caused by the “gross negligence or willful misconduct” of Verizon
10 VA. *See* § 19.1.6 of AT&T-proposed interconnection agreement.

11

12 **Q. WHAT IS VERIZON VA’S POSITION ON THIS ISSUE?**

13 A. In § § 24.5 and 25.7 of its proposed interconnection agreement, Verizon VA
14 proposes language that requires each party expressly to indemnify the other party
15 from any claims arising from contractual obligations that do not involve the other
16 party. Throughout negotiations, AT&T has characterized these sections as
17 Verizon VA’s attempt to inject its influence into relationships between AT&T and
18 its customers. To the contrary, Verizon VA advocates its proposed language in
19 order to stay removed from the contractual relationships between AT&T and its
20 customers. If Verizon VA has no relationship with AT&T’s customers, it should
21 likewise not be exposed to any legal dispute arising from AT&T’s customer
22 contracts.

1

2 **Q. DOES THE VERIZON VA PROPOSAL PROVIDE FOR PARITY OF**
3 **TREATMENT OF END USER CUSTOMERS?**

4 A. Yes it does. Verizon VA is proposing to have AT&T treat its end user customers
5 in the same manner that Verizon VA treats its own. That is, when confronted by
6 claims based on errors or omissions in directory listings, AT&T and Verizon VA
7 are both in a position to invoke the limitation of liability provisions in their
8 respective tariffs. Any claim that falls outside of the range of those constrained by
9 the tariff's limitation of liability clause is simply a risk of doing business to be
10 borne by the carrier providing service directly to the end user.

11

12 **Q. AT&T ARGUES THAT BECAUSE VERIZON VA COMPILES THE**
13 **DIRECTORY LISTINGS DATA BASE, IT SHOULD BE LIABLE FOR**
14 **ERRORS AND OMISSIONS. DOES VERIZON VA AGREE?**

15 A. No. As with all other tariff provisions, AT&T takes service from Verizon VA
16 subject to all of the terms, conditions and limitations pertaining to it. Because
17 only AT&T has privity with its end-users, it alone is in a position to police the use
18 of those services by those end-users. Therefore, AT&T should be obligated to
19 ensure, whether through its own tariffs and/or through other means, that not only
20 AT&T, but also AT&T's customers, comply with the Verizon VA tariff *terms* that
21 limit use of the Verizon VA services being resold by AT&T. Verizon VA's
22 proposal is consistent with the fact that both Parties have proposed provisions

1 acknowledging no third party beneficiaries. In a recent AT&T/Verizon
2 arbitration in New York, the New York Commission found “that Verizon’s
3 proposal to limit its liability to AT&T customers is a proper and valid commercial
4 practice.” *AT&T-Verizon New York Order*, at 18.

5
6 **Q. HAVE OTHER CLECS AGREED TO CLAUSES SIMILAR TO THAT**
7 **PROPOSED BY VERIZON VA?**

8 A. Yes. The former Bell Atlantic-Virginia and Media One, which is now operating
9 as an AT&T affiliate, reached a negotiated interconnection agreement that
10 included a limitation of liability language similar to that proposed by Verizon VA
11 here.⁵ In Bell Atlantic-Virginia/Media One Agreement states:

12 The Parties agree that neither Party shall be liable to the
13 customers of the other Party in connection with its
14 provision of services to the other Party under this
15 Agreement. Nothing in this Agreement shall be deemed to
16 create a third party beneficiary relationship between the
17 Party providing the service and the customers of the Party
18 purchasing the service. In the event of a dispute involving
19 both Parties with a customer of one Party, both Parties shall
20 assert the applicability of any limitations on liability to
21 customers that may be contained in either Party’s
22 applicable Tariff(s).⁶
23

24 This language is essential because Verizon VA has no relationship with AT&T
25 end-users. Finally, Verizon VA’s proposed language is mutual — AT&T will

⁵ See *Application of Bell Atlantic-Virginia, Inc. and Media One of Virginia For Approval of An Interconnection Agreement*, Case No. PUC980151, Order Approving Agreement (Virginia Commission, Dec. 14, 1998).

⁶ *Interconnection Agreement Under Section 252 and 252 of the Telecommunications Act of 1996, by and between Bell Atlantic-Virginia, Inc. and MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc.*, dated March 25, 1997, § 26.3 (attached at Exhibit D).

1 enjoy the same protections in Verizon VA end-user contracts, an important
2 commercial protection as AT&T's local network continues to grow.

3
4 Verizon VA has no relationship with AT&T's customers. Verizon VA's proposal
5 seeks only to ensure what actually reflects standard commercial practice—that a
6 party not involved in a commercial transaction (here, the provision of local
7 exchange service) be immune from any liability arising from that transaction.
8 Requiring both parties to include such terms in their tariffs and customer contracts
9 achieves this result: if either Verizon VA or AT&T should become liable to its
10 third-party customer, it would deal directly with that third party. The carrier
11 caught in the middle – be it Verizon VA or AT&T – would bear no risk.

12
13 **XX. ASSURANCE OF PAYMENT (Issue VI-1(N))**

14 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

15 A. The language proposed under Issue VI-1(N) permits Verizon VA to seek from a
16 CLEC assurances of payment for amounts due or to become due.

17 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

18 A. The parties discussed this issue in the August 2 mediation session. As Verizon
19 VA explained, its concern is not with WorldCom, but with smaller or less
20 financially stable CLECs that might adopt this interconnection agreement.

1 In an effort to address WorldCom's concerns, Verizon VA offered to sign a letter,
2 upon the execution of the interconnection agreement, exempting WorldCom from
3 the assurance of payment requirement. WorldCom agreed to draft that letter but,
4 as of the filing of this testimony, Verizon VA has not received it.

5
6 **XXI. DEFAULT (Issue VI-1(O))**

7 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

8 A. The language proposed under Issue VI-1(O) addresses the parties' rights in the
9 event of a default. A default would include a material breach of the agreement,
10 such as a failure to make payments due.

11
12 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

13 A. The parties discussed this issue in the August 2 mediation session. After initially
14 discussing § 12 of the Verizon VA Model Template, the parties focused on
15 §§ 22.4 and 22.5 of the AT&T-Verizon VA agreement. This language excludes
16 from the scope of "default" bona fide billing disputes and sends to the ADR
17 process disputes over whether a breach is material.

18
19 Again, acknowledging that its concerns are not with WorldCom, but with less
20 financially stable CLECs, Verizon VA offered to send to ADR any dispute with a
21 CLEC that has a net worth in excess of \$100 million. WorldCom agreed to draft a

1 revision to § 22.4 of the AT&T-Verizon VA language to incorporate this change
2 but, as of the filing of this testimony, Verizon VA has not received that language.
3

4 **XXII. DISCONTINUANCE OF SERVICE BY CLEC (Issue VI-1(P))**

5 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

6 A. The language proposed under Issue VI-1(P) provides that a CLEC shall send
7 advance written notice of its actual or pending discontinuance of service to
8 Verizon VA, the Commission and the CLEC's end user customers.
9

10 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

11 A. The parties discussed this issue in the August 2 mediation session but were unable
12 to reach an agreement. WorldCom maintains that this proposal represents an
13 attempt by Verizon VA to dictate how WorldCom should treat its own customers.
14

15 **Q. WHAT IS VERIZON VA'S POSITION?**

16 A. Due to the failure of several CLECs, this is an issue that has become the focus of
17 much attention by Verizon and a handful of state commissions. Inevitably, the
18 burden to maintain service has often fallen on Verizon when a CLEC abandons its
19 end user customers without sufficient notice. In the absence of the type of
20 contract it proposes, Verizon VA has protection in only the few states that have

1 dealt with this issue comprehensively. Moreover, this type of language will
2 prevent or minimize loss of service to the end user customers.

3
4 **XXIII. INSURANCE (Issue VI-1(Q))**

5 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

6 A. The language proposed under Issue VI-1(Q) requires a CLEC to maintain a
7 sufficient level of insurance during the life of the agreement and for a reasonable
8 period thereafter.

9
10 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

11 A. The parties discussed this issue in the August 2 mediation session. As with the
12 assurance of payment and default clauses, Verizon VA's concern is not with
13 WorldCom, but with smaller or less financially stable CLECs that might adopt
14 this interconnection agreement.

15
16 In an effort to address WorldCom's concerns, Verizon VA offered to modify its
17 proposed language to allow CLECs with a net worth in excess of \$100 million to
18 be self-insured. As of the filing of this testimony, WorldCom has not responded
19 to that proposal.

1 **XXIV. REFERENCES (Issue VI-1(R))**

2 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

3 A. The language proposed under Issue VI-1(R) clarifies the parties' intent with
4 regard to various documents referred to in the interconnection agreement.

5
6 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

7 A. The parties discussed this issue in the August 2 mediation session. WorldCom
8 agreed to Verizon VA's proposed § 35.1, but took issue with § 35.2. WorldCom's
9 position appears to be that the terms of any tariffs or Verizon VA policies,
10 practices and handbooks should be frozen as of the time of the execution of the
11 agreement.

12
13 **Q. WHAT IS VERIZON VA'S POSITION?**

14 A. Neither tariffs nor internal Verizon VA policies or practices can be held stagnant
15 during the life of the interconnection agreement. Rather, they must remain
16 dynamic to allow the parties to adapt to changes in the market and technology.
17 Further, Verizon VA may not change a tariff unilaterally. If it proposes a change
18 to which a CLEC disagrees, that matter may be litigated before the state
19 commission having jurisdiction. Similarly, most changes to Verizon VA
20 handbooks are addressed in the change management process - a process in which
21 WorldCom is an active participant. Therefore, the interconnection agreement

1 must reflect the fact that all documents referred to may evolve from time-to-time
2 throughout the life of the agreement.

3
4 **XXV. TECHNOLOGY UPGRADES (Issue VI-1(T))**

5 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

6 A. The language proposed under Issue VI-1(T) states that Verizon VA retains the
7 right to upgrade its network at its discretion.

8
9 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

10 A. This issue remains unresolved.

11
12 **Q. WHAT IS VERIZON VA'S POSITION?**

13 A. The language proposed is critical to Verizon VA, in that WorldCom must
14 acknowledge that nothing in the interconnection agreement limits Verizon VA's
15 ability to upgrade or modify its network through the introduction of new
16 technology. The foregoing would, of course, be subject to any prohibitions to
17 such changes under applicable law.

18
19 **XXVI. SALES OF EXCHANGES/TRANSFER OF TELEPHONE OPERATIONS**
20 **(Issues V-15 and VII-17)**

21 **Q. BRIEFLY DESCRIBE THIS ISSUE.**

1 A. The AT&T-proposed language challenged under Issues V-15 and VII-17 would
2 give AT&T the unprecedented right to exercise, essentially, a veto right over any
3 future sale or transfer of Verizon VA assets.
4

5 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

6 A. The parties were unable to resolve this issue as a result of mediation.
7

8 **Q. WHAT IS VERIZON VA'S POSITION?**

9 A. As a preliminary matter, the assignment and transfer of assets is not a subject
10 related at all to interconnection. Accordingly, it is not an issue that is subject to
11 negotiation and arbitration under the provisions of the Telecommunications Act.
12 Moreover, it would not be appropriate or necessary to address the sale of
13 exchanges in an interconnection agreement with a specific CLEC. If Verizon VA
14 were to sell any of its exchanges, the Virginia Commission would be involved
15 and, like any of Verizon VA's customers, CLEC customers could raise any
16 concern it may have.
17

18 **Q. AT&T SEEMS TO WANT VERIZON VA TO RETAIN SOME TYPE OF**
19 **RESPONSIBILITY AFTER A SALE OF ASSETS OR TO IMPOSE**
20 **RESPONSIBILITIES ON THE TRANSFEREE. WOULD EITHER OF**
21 **THESE SCENARIOS BE APPROPRIATE?**

1 A. No. Contrary to AT&T's demands, no rule of law permits — much less compels
2 — Verizon VA to continue its obligations under an interconnection **agreement**
3 after the relevant assets have been sold and Verizon VA no longer provides
4 service in a particular geographic area. In the event of a transfer of assets, the
5 rights and obligations of an ILEC under state and federal law would no longer
6 reside with Verizon VA once those assets were in the possession of another ILEC.
7 Those statutory rights and obligations would reside with the new ILEC. Verizon
8 VA cannot be compelled to obligate an assignee or transferee to the terms of the
9 interconnection agreements that Verizon VA enters into with other carriers.

10

11 **Q. HAS ANY STATE COMMISSION RECENTLY ADDRESSED THIS**
12 **ISSUE?**

13 A. Yes. The New York Public Service Commission recently rejected an AT&T
14 proposal for language very similar if not identical to the language AT&T is
15 proposing here. In response to Verizon's objection to this language, the New
16 York Commission stated that while AT&T has a valid interest in the continuing
17 performance of the terms in its interconnection agreement in the event of an asset
18 transfer, that interest is "best addressed in the context of the Commission review
19 of any proposed transfer of Verizon's assets." Accordingly, the New York
20 Commission found that the AT&T proposed language did not need to be adopted.⁷

21

⁷ *AT&T-Verizon New York Order*, at 23-25.

1 **XXVII. Applicable Law and Change of Law (Issue IV-15 and VI-1(E))**

2 **Q. WHAT ISSUES REMAIN REGARDING THE PROVISION OF UNES IN**
3 **ACCORDANCE WITH APPLICABLE LAW AS THAT MAY CHANGE**
4 **FROM TIME TO TIME?**

5 A. WorldCom and Verizon VA generally agree on the concept that UNes--indeed all
6 services under an interconnection agreement--should be provided in accordance
7 with applicable law and that when that law changes, the change should be
8 engrafted into the interconnection agreement. That said, the Parties do not agree
9 on how to express the "applicable law" provision or on the procedures to use to
10 implement a change in applicable law.

11
12 **Q. HOW WOULD VERIZON VA EXPRESS THE "APPLICABLE LAW"**
13 **PROVISION?**

14 A. Verizon VA's provision for assuring the implementation of the interconnection
15 agreement in accordance with applicable law is straightforward as set forth in
16 § 1.1 of its UNE Attachment to the proposed interconnection agreement with
17 WorldCom:

18 Verizon VA shall provide to **CLEC, in accordance with
19 this Agreement (including but not limited to, Verizon VA's
20 applicable Tariffs) and the requirements of Applicable
21 Law, access to Verizon VA's Network Elements on an
22 unbundled basis and in combinations ("Combinations");
23 provided, however, that notwithstanding any other
24 provisions of this Agreement, Verizon VA shall be
25 obligated to provide unbundled Network Elements
26 ("UNes") and Combinations **CLEC only to the extent
27 required by Applicable Law and may decline to provide

1 UNEs or Combination[s] to **CLEC to the extent that
2 provision of such UNEs or Combinations[s] are not
3 required by applicable law. (emphasis added)

4 This provision clearly sets forth an order of precedence and avoids a contractual
5 ambiguity between the Agreement and Applicable Law: if the Agreement and
6 Applicable Law are at odds, Applicable Law takes precedent through the explicit
7 provision “notwithstanding any other provisions of this Agreement....” This
8 gives explicit guidance during any period when the Agreement’s terms and
9 Applicable Law may vary.

10

11 **Q. WHAT IS WORLDCOM’S PROPOSAL?**

12 A. WorldCom’s proposal in § 1.1 of its Attachment III to its proposed
13 interconnection agreement sets up the ambiguity that Verizon VA believes should
14 be avoided:

15 § 1.1 Verizon VA shall provide Unbundled Network
16 Elements in accordance with this Agreement and
17 Applicable Law.

18 This provision obviously creates a legally ambiguous position when the
19 Agreement and Applicable Law differ. Verizon VA’s proposal is clearly superior
20 and will avoid disputes during the term of the interconnection agreement.

21

22 **Q. WHAT IS THE DISPUTE AS TO IMPLEMENTATION OF A CHANGE IN**
23 **APPLICABLE LAW?**

24 A. Verizon VA supports a defined implementation process when a change in
25 applicable law is not accompanied by an explicit implementation schedule. This

1 would occur, for example, following a Court order or a Commission order if an
2 implementation schedule were not set forth.

3
4 **Q. WHAT IS VERIZON VA'S PROPOSAL?**

5 A. In the case of changes in law that would require Verizon VA to provide a new
6 service (e.g., dark fiber, subloops, etc. under the Commission's UNE Remand
7 Order issued in 2000), Verizon VA proposes that the Parties comply with such
8 change in law in accordance with its terms. If the change in law requires a
9 contract amendment, Verizon VA believes that the Parties should negotiate such
10 changes promptly and in good faith. This is exactly what Verizon VA did with
11 respect to the changes required under the UNE Remand Order. Not later than the
12 respective dates that new UNEs were required to be offered under such Order,
13 Verizon made available to CLECs amendments to give effect to the new
14 obligations. This process is altogether appropriate given the introduction of a new
15 obligation to provide a service -- with all the concomitant coordination that often
16 is required between Verizon and the CLECs.

17
18 The foregoing scenario is fundamentally different from the one in which the
19 Commission, the VA Commission or a court of competent jurisdiction were to
20 determine that Verizon VA is not required to provide a particular benefit or
21 service. In such cases, Verizon VA of course will comply with the change in law.
22 But it should not be required, as WorldCom has insisted, to "negotiate" with the

1 CLEC over whether and how Verizon VA will be able to give effect to the change
2 in law. The recent Commission Internet Order is a good example. Verizon VA
3 should not be required to “negotiate” over when it can stop paying reciprocal
4 compensation on Internet traffic. The Commission already decided that -- it said
5 the proscription on such payments takes effect 30 days after the effective date of
6 the Internet Order.

7
8 All that said, Verizon VA has suggested a compromise position to WorldCom to
9 give it additional comfort in the case of a change in law obviating a requirement
10 that Verizon VA may have to offer a UNE. The compromise is as follows. If the
11 entity issuing the change in law does not provide for a sunset period (e.g., the
12 requirement to provide the UNE ends on the effective date of the order), Verizon
13 VA would, in any case, provide a 45 day implementation schedule beginning
14 from the day Verizon VA notifies WorldCom that there has been a change of law
15 that does not require Verizon VA to provide the UNE. During this 45 day period,
16 the Parties will negotiate and presumably reach agreement as to how the change
17 in law will affect the implementation of the interconnection agreement going
18 forward. In addition, upon receipt of such notice, WorldCom would be free to
19 petition the Commission or VA Commission with respect to Verizon VA’s
20 proposed discontinuance of provision of the UNE. However, absent an order
21 from the Commission prohibiting Verizon VA from discontinuing provision of
22 the UNE, Verizon VA would be free to stop providing the UNE upon the

1 expiration of the 45v days period. This is a fair and reasonable approach and
2 should be adopted in the Parties' contract.

3

4 **Q. WHAT IS WORLDCOM'S PROPOSAL?**

5 A. Maybe not surprisingly, WorldCom wants no set schedule to implement the
6 change in applicable law. Obviously, no set schedule means potential delays for a
7 myriad of reasons and a very inefficient and unpredictable implementation
8 process.

9

10 **Q. DID WORLDCOM PROPOSE IN THE MEDIATION TO ELIMINATE**
11 **THE "ANTI-GAMING" PROVISION VERIZON VA SUPPORTS IN ITS**
12 **APPLICABLE LAW PROVISIONS?**

13 A. Yes.

14

15 **Q. WHAT IS THE "ANTI-GAMING" PROVISION AND WHY IS IT**
16 **NEEDED?**

17 A. The purpose of this "anti-gaming" provision is to be sure a CLEC does not do
18 indirectly what it may not do directly under Applicable Law. For example,
19 Verizon VA need not newly combine UNEs for a CLEC that are not currently
20 combined in its system. In order to get around that provision, however, a CLEC
21 might entice a Verizon VA customer to order that service and then, once the
22 service is installed, change its local service to that CLEC. To assure that

1 “gaming” does not occur, Verizon VA proposed the following provision in § 1.2
2 of the UNE Attachment to the proposed interconnection agreement with
3 WorldCom:

4 1.2 **CLEC shall not directly or through a third party
5 (e.g., **CLEC’s Customer) order Telecommunications
6 Services from Verizon VA in order to impose on Verizon
7 VA an obligation to provide a UNE or a Combination that
8 Verizon VA would not otherwise have an obligation to
9 provide. For example, **CLEC shall not order
10 Telecommunications Services or advise its Customer to
11 order Telecommunications Services where existing UNEs
12 or Combination desired by **CLEC are not available in
13 order to permit **CLEC to subsequently convert the
14 Telecommunications Services to the UNEs or
15 Combinations desired by **CLEC.

16 This provision should not be objectionable unless the CLEC proposes to engage
17 in these “gaming” practices.

18

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

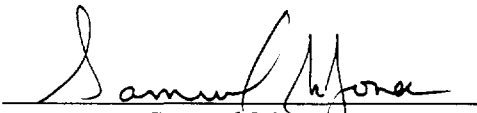
20 **A. Yes.**

21

Declaration of Steven J. Pitterle

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17th day of August, 2001.

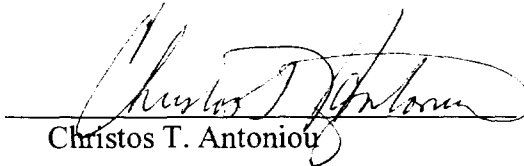


Samuel M. Jones
On behalf of
Steven J. Pitterle

Declaration of Christos T. Antoniou

I declare under penalty of perjury that I have reviewed the foregoing testimony and confirmed that it is true and correct.

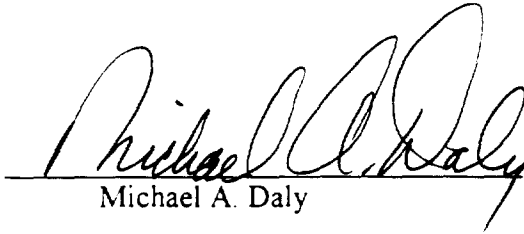
Executed this 17th day of August, 2001.


Christos T. Antoniou

Declaration of Michael A. Daly

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17th day of August, 2001.


Michael A. Daly